



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1996

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-2040

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101784.

The City of Dallas (the "city") received a request for documents related to the thunderstorms and resulting flooding that occurred in the City of Dallas on May 5, 1995. You claim that all of the requested information is excepted from disclosure under section 552.103 of the Government Code. Alternatively, you claim that some of the documents you have submitted are excepted from disclosure pursuant to section 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

To show that section 552.103 is applicable, the city must demonstrate that 1) litigation is pending or reasonably anticipated and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA). Open Records Decision No. 638 (1996).

¹The city originally claimed that the requested information was excepted from disclosure pursuant to section 552.107 of the Government Code, but subsequently withdrew its claim under this section.

First, you have submitted a copy of the petition against the city and a notice of claim letter which you state complies with the notice requirements of the TTCA. We conclude that litigation is pending or reasonably anticipated.

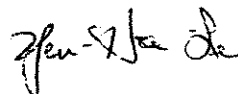
Second, we find that, except for an internal memorandum dated May 15, 1995 and found as part of Exhibit B, the documents submitted by the city are related to the pending or reasonably anticipated litigation for the purposes of section 552.103. The May 15th memorandum addressing the city's response to an April 19, 1995 tornado is non-responsive to the request for "[r]eports or document . . . regarding the May 5, 1995 storms." However, if the memorandum is indeed responsive to the request, we conclude that it is not related to the pending litigation, which as the city stated, has resulted from the flooding incident of May 5, 1995. Therefore, the memorandum, if it is responsive, must be disclosed. The city does not assert that the memorandum should be excepted from disclosure under section 552.111. All other documents submitted by the city may be withheld pursuant to section 552.103.

We note, however, that generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Having concluded that the requested information may be withheld pursuant to section 552.103 of the Government Code, we need not address the city's section 552.111 claim.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 101784

Enclosures: Submitted documents

cc: Ms. Kelly C. Long
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(w/o enclosures)